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HOUSE BILL 2099

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State of Washington

60th Legislature

2007 Regular Session

By Representatives Cody, Morrell and Kenney

Read first time 02/08/2007. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to activities to support the certificate of need  
2 program; amending RCW 70.38.015, 70.38.025, 70.38.095, 70.38.115,  
3 70.38.125, and 70.38.135; adding new sections to chapter 70.38 RCW; and  
4 creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 70.38.015 and 1989 1st ex.s. c 9 s 601 are each  
7 amended to read as follows:

8 It is declared to be the public policy of this state:

9 (1) That health planning to promote, maintain, and assure the  
10 health of all citizens in the state, to provide accessible health  
11 services, health manpower, health facilities, and other resources while  
12 controlling excessive increases in costs, and to recognize prevention  
13 as a high priority in health programs, is essential to the health,  
14 safety, and welfare of the people of the state. Health planning should  
15 be responsive to changing health and social needs and conditions.  
16 Involvement in health planning from both consumers and providers  
17 throughout the state should be encouraged;

18 (2) That the development of health services and resources,  
19 including the construction, modernization, and conversion of health

1 facilities, should be accomplished in a planned, orderly fashion,  
2 consistent with identified priorities and without unnecessary  
3 duplication or fragmentation. The certificate of need program is a  
4 component of a health planning regulatory process that:

5 (a) Balances consideration of:

6 (i) Access to quality care at a reasonable cost for all residents;

7 (ii) Optimal use of existing health care resources;

8 (iii) Fostering expenditure control; and

9 (iv) Avoidance of unnecessary duplication of health care facilities  
10 and services;

11 (b) Supports improved health care outcomes by:

12 (i) Basing decisions on the best available evidence and  
13 information; and

14 (ii) Continuously monitoring compliance;

15 (c) Is accountable for maintaining the resources necessary for high  
16 quality decisions that are timely and consistent;

17 (d) Utilizes detailed criteria, standards, and need methodologies,  
18 both general and specific to particular facilities and services, that  
19 are updated regularly and that are complementary to the statewide  
20 health resources strategy; and

21 (e) Is conducted in a transparent and accountable manner;

22 (3) That the development and ongoing maintenance of adequate health  
23 care information, statistics and projections of need for health  
24 facilities and services ~~((is))~~ are essential to ~~((effective health~~  
25 ~~planning and resources development))~~ supporting the review and  
26 monitoring of specified health care facilities and services regulated  
27 by the certificate of need program;

28 (4) That the development of ~~((nonregulatory))~~ other approaches to  
29 health care ~~((cost containment should be))~~ expenditure control are  
30 considered, including the strengthening of ~~((price))~~ competition~~((; and~~

31 ~~((5) That health planning should be concerned with public health and~~  
32 ~~health care financing, access, and quality, recognizing their close~~  
33 ~~interrelationship and emphasizing cost control of health services,~~  
34 ~~including cost effectiveness and cost benefit analysis)).~~

35 **Sec. 2.** RCW 70.38.025 and 2000 c 175 s 22 are each amended to read  
36 as follows:

1           When used in this chapter, the terms defined in this section shall  
2 have the meanings indicated.

3           (1) "Affected party" means an interested person who:

4           (a) Is located or resides in the applicant's health service area;

5           (b) Testified at a public hearing or submitted written information;

6 and

7           (c) Requested in writing to be informed of the department's  
8 decision.

9           (2) "Board of health" means the state board of health created  
10 pursuant to chapter 43.20 RCW.

11           ~~((+2))~~ (3) "Capital expenditure" is an expenditure, including a  
12 force account expenditure (i.e., an expenditure for a construction  
13 project undertaken by a nursing home facility as its own contractor)  
14 which, under generally accepted accounting principles, is not properly  
15 chargeable as an expense of operation or maintenance. Where a person  
16 makes an acquisition under lease or comparable arrangement, or through  
17 donation, which would have required review if the acquisition had been  
18 made by purchase, such expenditure shall be deemed a capital  
19 expenditure. Capital expenditures include donations of equipment or  
20 facilities to a nursing home facility which if acquired directly by  
21 such facility would be subject to certificate of need review under the  
22 provisions of this chapter and transfer of equipment or facilities for  
23 less than fair market value if a transfer of the equipment or  
24 facilities at fair market value would be subject to such review. The  
25 cost of any studies, surveys, designs, plans, working drawings,  
26 specifications, and other activities essential to the acquisition,  
27 improvement, expansion, or replacement of any plant or equipment with  
28 respect to which such expenditure is made shall be included in  
29 determining the amount of the expenditure.

30           ~~((+3))~~ (4) "Continuing care retirement community" means an entity  
31 which provides shelter and services under continuing care contracts  
32 with its members and which sponsors or includes a health care facility  
33 or a health service. A "continuing care contract" means a contract to  
34 provide a person, for the duration of that person's life or for a term  
35 in excess of one year, shelter along with nursing, medical, health-  
36 related, or personal care services, which is conditioned upon the  
37 transfer of property, the payment of an entrance fee to the provider of  
38 such services, or the payment of periodic charges for the care and

1 services involved. A continuing care contract is not excluded from  
2 this definition because the contract is mutually terminable or because  
3 shelter and services are not provided at the same location.

4 ~~((4))~~ (5) "Department" means the department of health.

5 ~~((5))~~ (6) "Expenditure minimum" means, for the purposes of the  
6 certificate of need program, one million dollars adjusted by the  
7 department by rule to reflect changes in the United States department  
8 of commerce composite construction cost index; or a lesser amount  
9 required by federal law and established by the department by rule.

10 ~~((6))~~ (7) "Health care facility" means hospices, hospice care  
11 centers, hospitals, psychiatric hospitals, nursing homes, kidney  
12 disease treatment centers, ambulatory surgical facilities, and home  
13 health agencies, and includes such facilities when owned and operated  
14 by a political subdivision or instrumentality of the state and such  
15 other facilities as required by federal law and implementing  
16 regulations, but does not include any health facility or institution  
17 conducted by and for those who rely exclusively upon treatment by  
18 prayer or spiritual means in accordance with the creed or tenets of any  
19 well-recognized church or religious denomination, or any health  
20 facility or institution operated for the exclusive care of members of  
21 a convent as defined in RCW 84.36.800 or rectory, monastery, or other  
22 institution operated for the care of members of the clergy. In  
23 addition, the term does not include any nonprofit hospital: (a) Which  
24 is operated exclusively to provide health care services for children;  
25 (b) which does not charge fees for such services; and (c) if not  
26 contrary to federal law as necessary to the receipt of federal funds by  
27 the state.

28 ~~((7))~~ (8) "Health maintenance organization" means a public or  
29 private organization, organized under the laws of the state, which:

30 (a) Is a qualified health maintenance organization under Title  
31 XIII, section 1310(d) of the Public Health Services Act; or

32 (b)(i) Provides or otherwise makes available to enrolled  
33 participants health care services, including at least the following  
34 basic health care services: Usual physician services, hospitalization,  
35 laboratory, X-ray, emergency, and preventive services, and out-of-area  
36 coverage; (ii) is compensated (except for copayments) for the provision  
37 of the basic health care services listed in (b)(i) to enrolled  
38 participants by a payment which is paid on a periodic basis without

1 regard to the date the health care services are provided and which is  
2 fixed without regard to the frequency, extent, or kind of health  
3 service actually provided; and (iii) provides physicians' services  
4 primarily (A) directly through physicians who are either employees or  
5 partners of such organization, or (B) through arrangements with  
6 individual physicians or one or more groups of physicians (organized on  
7 a group practice or individual practice basis).

8 ~~((+8+))~~ (9) "Health services" means clinically related (i.e.,  
9 preventive, diagnostic, curative, rehabilitative, or palliative)  
10 services and includes alcoholism, drug abuse, and mental health  
11 services and as defined in federal law.

12 ~~((+9+))~~ (10) "Health service area" means a geographic region  
13 appropriate for effective health planning which includes a broad range  
14 of health services.

15 ~~((+10+))~~ (11) "Person" means an individual, a trust or estate, a  
16 partnership, a corporation (including associations, joint stock  
17 companies, and insurance companies), the state, or a political  
18 subdivision or instrumentality of the state, including a municipal  
19 corporation or a hospital district.

20 ~~((+11+))~~ (12) "Provider" generally means a health care professional  
21 or an organization, institution, or other entity providing health care  
22 but the precise definition for this term shall be established by rule  
23 of the department, consistent with federal law.

24 ~~((+12+))~~ (13) "Public health" means the level of well-being of the  
25 general population; those actions in a community necessary to preserve,  
26 protect, and promote the health of the people for which government is  
27 responsible; and the governmental system developed to guarantee the  
28 preservation of the health of the people.

29 ~~((+13+))~~ (14) "Secretary" means the secretary of health or the  
30 secretary's designee.

31 ~~((+14+))~~ (15) "Tertiary health service" means a specialized service  
32 that meets complicated medical needs of people and requires sufficient  
33 patient volume to optimize provider effectiveness, quality of service,  
34 and improved outcomes of care.

35 ~~((+15+))~~ (16) "Hospital" means any health care institution which is  
36 required to qualify for a license under RCW 70.41.020~~((+2+))~~ (4); or as  
37 a psychiatric hospital under chapter 71.12 RCW.

1       **Sec. 3.** RCW 70.38.095 and 2005 c 274 s 332 are each amended to  
2 read as follows:

3       (~~Public accessibility to records shall be accorded by health  
4 systems agencies pursuant to Public Law 93-641 and chapter 42.56 RCW.  
5 A health systems agency shall be considered a "public agency" for the  
6 sole purpose of complying with the public records act, chapter 42.56  
7 RCW.~~)

8       The department shall adopt policies for informing affected parties  
9 and the interested public of certificate of need activities through  
10 postal mailings, electronic mailings, or web site notification, as  
11 appropriate to the activity. The policy shall, at a minimum, include  
12 means for providing reasonable notification for distributing  
13 information related to: Applications; the status of the department's  
14 activities related to applications under consideration; determinations  
15 of nonreviewability; findings and decisions of the department; the  
16 status of appeals of findings and decisions of the department; and the  
17 monitoring status of approved projects. The policy shall include a  
18 searchable repository of recent and historical certificate of need  
19 decisions.

20       **Sec. 4.** RCW 70.38.115 and 1996 c 178 s 22 are each amended to read  
21 as follows:

22       (1) Certificates of need shall be issued, denied, suspended, or  
23 revoked by the designee of the secretary in accord with the provisions  
24 of this chapter and rules of the department (~~(which)~~) that develop and  
25 publish review criteria and standards and establish review procedures  
26 (~~(and criteria for the certificate of need program)~~).

27       (2) Criteria for the review of certificate of need applications,  
28 except as provided in subsection (3) of this section for health  
29 maintenance organizations, shall include but not be limited to  
30 consideration of the following:

31       (a) The need that the population served or to be served by such  
32 services has for such services based on current utilization data,  
33 evidence related to appropriate utilization, and utilization trends;

34       (b) The availability of less costly or more effective alternative  
35 methods of providing such services;

36       (c) The financial feasibility and the probable impact of the  
37 proposal on the cost of and charges for providing health services in

1 the community to be served, including the impact on the current health  
2 system infrastructure and ability of existing providers to serve the  
3 underinsured and uninsured;

4 (d) In the case of health services to be provided~~((τ))~~;

5 (i) The availability of alternative uses of project resources for  
6 the provision of other health services~~((τ))~~;

7 (ii) The extent to which such proposed services will be accessible  
8 to all residents of the area to be served~~((τ))~~; and

9 (iii) ~~((the need for and the availability in the community of~~  
10 ~~services and facilities for osteopathic physicians and surgeons and~~  
11 ~~allopathic physicians and their patients.))~~ The ~~((department shall~~  
12 ~~consider the application in terms of its))~~ impact on existing and  
13 proposed institutional and other educational training programs for  
14 ~~((doctors of osteopathic medicine and surgery and medicine))~~ health  
15 care providers at the student, internship, and residency training  
16 levels;

17 (e) In the case of a construction project, the costs and methods of  
18 the proposed construction, including the cost and methods of energy  
19 provision, and the probable impact of the ~~((construction))~~ project  
20 ~~((reviewed))~~ (i) on the cost of providing ~~((health))~~ services by the  
21 ~~((person proposing such construction project))~~ applicant and (ii) on  
22 the cost ~~((and charges to the public))~~ of providing ~~((health))~~ services  
23 by other ~~((persons))~~ entities;

24 (f) The special needs and circumstances of ~~((osteopathic hospitals,~~  
25 ~~nonallopathic services and))~~ children's hospitals;

26 (g) Improvements or innovations in the financing and delivery of  
27 health services ~~((which))~~ that foster cost containment ~~((and serve to~~  
28 ~~promote quality assurance and))~~, improved health outcomes, cost-  
29 effectiveness, and promote quality;

30 (h) ~~((In the case of))~~ For proposed health services ~~((proposed to~~  
31 ~~be provided))~~, a comparison of the efficiency and appropriateness of  
32 the use of similar existing services and facilities ~~((similar to those~~  
33 ~~proposed))~~;

34 (i) ~~((In the case of))~~ For existing services or facilities, the  
35 quality of care provided by such services or facilities in the past;

36 (j) In the case of hospitals ~~((certificate of need applications))~~,  
37 whether the ~~((hospital))~~ applicant meets or exceeds the regional

1 average level of charity care, as determined by the secretary(~~(+and)~~),  
2 and whether the applicant has adopted policies in excess of the charity  
3 care and reporting requirement of RCW 70.170.060;

4 (k) (~~In the case of~~) For nursing home applications:

5 (i) The availability of other nursing home beds in the planning  
6 area to be served; and

7 (ii) The availability of other services in the community to be  
8 served. Data used to determine the availability of other services will  
9 include but not be limited to data provided by the department of social  
10 and health services;

11 (l) For certificate of need regulated services other than  
12 hospitals, whether the applicant will provide charity care consistent  
13 with a minimal community standard developed by the department with  
14 provider participation for each regulated service;

15 (m) The availability of appropriate health care providers to  
16 deliver the proposed service; and

17 (n) Whether the applicant agrees to provide services to medicaid  
18 and medicare enrollees and agrees not to discriminate against medicaid  
19 and medicare enrollees based upon their coverage.

20 (3) A certificate of need application of a health maintenance  
21 organization or a health care facility which is controlled, directly or  
22 indirectly, by a health maintenance organization, shall be approved by  
23 the department if the department finds:

24 (a) Approval of such application is required to meet the needs of  
25 the members of the health maintenance organization and of the new  
26 members which such organization can reasonably be expected to enroll;  
27 and

28 (b) The health maintenance organization is unable to provide,  
29 through services or facilities which can reasonably be expected to be  
30 available to the organization, its health services in a reasonable and  
31 cost-effective manner which is consistent with the basic method of  
32 operation of the organization and which makes such services available  
33 on a long-term basis through physicians and other health professionals  
34 associated with it.

35 A health care facility, or any part thereof, with respect to which  
36 a certificate of need was issued under this subsection may not be sold  
37 or leased and a controlling interest in such facility or in a lease of

1 such facility may not be acquired unless the department issues a  
2 certificate of need approving the sale, acquisition, or lease.

3 ~~(4) ((Until the final expiration of the state health plan as  
4 provided under RCW 70.38.919, the decision of the department on a  
5 certificate of need application shall be consistent with the state  
6 health plan in effect, except in emergency circumstances which pose a  
7 threat to the public health.))~~ The department ~~((in making its final  
8 decision))~~ may issue a conditional certificate of need if it finds that  
9 the project is justified only under specific circumstances. The  
10 conditions shall directly relate to the project being reviewed. The  
11 conditions may be ~~((released))~~ eliminated if it can be substantiated  
12 that the conditions are no longer valid and the ~~((release))~~ elimination  
13 of such conditions would be consistent with the purposes of this  
14 chapter.

15 (5) Criteria adopted for review in accordance with subsection (2)  
16 of this section may vary according to the purpose for which the  
17 particular review is being conducted or the type of health service  
18 reviewed.

19 (6) The department shall specify information to be required for  
20 certificate of need applications. Within fifteen days of receipt of  
21 the application, the department shall request additional information  
22 considered necessary to the application or start the review process.  
23 Applicants may decline to submit requested information through written  
24 notice to the department, in which case review starts on the date of  
25 receipt of the notice. Applications may be denied or limited because  
26 of failure to submit required and necessary information.

27 (7) Concurrent review is for the purpose of comparative analysis  
28 and evaluation of competing or similar projects in order to determine  
29 which of the projects may best meet identified needs. Categories of  
30 projects subject to concurrent review include at least new health care  
31 facilities, new services, and expansion of existing health care  
32 facilities. The department shall specify time periods for the  
33 submission of applications for certificates of need subject to  
34 concurrent review, which shall not exceed ninety days. Review of  
35 concurrent applications shall start fifteen days after the conclusion  
36 of the time period for submission of applications subject to concurrent  
37 review. Concurrent review periods shall be limited to one hundred

1 fifty days, except as provided for in rules adopted by the department  
2 authorizing and limiting amendment during the course of the review, or  
3 for an unresolved pivotal issue declared by the department.

4 (8) Review periods for certificate of need applications other than  
5 those subject to concurrent review shall be limited to ninety days.  
6 Review periods may be extended up to thirty days if needed by a review  
7 agency, and for unresolved pivotal issues the department may extend up  
8 to an additional thirty days. A review may be extended in any case if  
9 the applicant agrees to the extension.

10 (9) The department or its designee, shall conduct a public hearing  
11 on a certificate of need application if requested unless the review is  
12 expedited or subject to emergency review. The department by rule shall  
13 specify the period of time within which a public hearing must be  
14 requested and requirements related to public notice of the hearing,  
15 procedures, recordkeeping and related matters.

16 (10)(a) Any applicant (~~((denied a certificate of need or whose~~  
17 ~~certificate of need has been suspended or revoked))~~ or affected party  
18 that disagrees with an action of or a failure to act by the department  
19 with respect to a project regulated by this chapter, including the  
20 denial or suspension or revocation of a certificate of need, has the  
21 right to an adjudicative proceeding. The proceeding is governed by  
22 chapter 34.05 RCW, the Administrative Procedure Act.

23 (b) Any health care facility or health maintenance organization  
24 that: (i) Provides services similar to the services provided by the  
25 applicant and under review pursuant to this subsection; (ii) is located  
26 within the applicant's health service area; and (iii) testified or  
27 submitted evidence at a public hearing held pursuant to subsection (9)  
28 of this section, shall be provided an opportunity to present oral or  
29 written testimony and argument in a proceeding under this subsection:  
30 PROVIDED, That the health care facility or health maintenance  
31 organization had, in writing, requested to be informed of the  
32 department's decisions.

33 (c) If the department desires to settle with the applicant prior to  
34 the conclusion of the adjudicative proceeding, the department shall so  
35 inform the health care facility or health maintenance organization and  
36 afford them an opportunity to comment, in advance, on the proposed  
37 settlement.

1 (11) An amended certificate of need shall be required for the  
2 following modifications of an approved project:

3 (a) A new service requiring review under this chapter;

4 (b) An expansion of a service subject to review beyond that  
5 originally approved;

6 (c) An increase in bed capacity;

7 (d) A significant reduction in the scope of a nursing home project  
8 without a commensurate reduction in the cost of the nursing home  
9 project, or a cost increase (as represented in bids on a nursing home  
10 construction project or final cost estimates acceptable to the person  
11 to whom the certificate of need was issued) if the total of such  
12 increases exceeds twelve percent or fifty thousand dollars, whichever  
13 is greater, over the maximum capital expenditure approved. The review  
14 of reductions or cost increases shall be restricted to the continued  
15 conformance of the nursing home project with the review criteria  
16 pertaining to financial feasibility and cost containment.

17 (12) An application for a certificate of need for a nursing home  
18 capital expenditure which is determined by the department to be  
19 required to eliminate or prevent imminent safety hazards or correct  
20 violations of applicable licensure and accreditation standards shall be  
21 approved.

22 (13)(a) Replacement of existing nursing home beds in the same  
23 planning area by an existing licensee who has operated the beds for at  
24 least one year shall not require a certificate of need under this  
25 chapter. The licensee shall give written notice of its intent to  
26 replace the existing nursing home beds to the department and shall  
27 provide the department with information as may be required pursuant to  
28 rule. Replacement of the beds by a party other than the licensee is  
29 subject to certificate of need review under this chapter, except as  
30 otherwise permitted by subsection (14) of this section.

31 (b) When an entire nursing home ceases operation, the licensee or  
32 any other party who has secured an interest in the beds may reserve his  
33 or her interest in the beds for eight years or until a certificate of  
34 need to replace them is issued, whichever occurs first. However, the  
35 nursing home, licensee, or any other party who has secured an interest  
36 in the beds must give notice of its intent to retain the beds to the  
37 department of health no later than thirty days after the effective date  
38 of the facility's closure. Certificate of need review shall be

1 required for any party who has reserved the nursing home beds except  
2 that the need criteria shall be deemed met when the applicant is the  
3 licensee who had operated the beds for at least one year, who has  
4 operated the beds for at least one year immediately preceding the  
5 reservation of the beds, and who is replacing the beds in the same  
6 planning area.

7 (14) In the event that a licensee, who has provided the department  
8 with notice of his or her intent to replace nursing home beds under  
9 subsection (13)(a) of this section, engages in unprofessional conduct  
10 or becomes unable to practice with reasonable skill and safety by  
11 reason of mental or physical condition, pursuant to chapter 18.130 RCW,  
12 or dies, the building owner shall be permitted to complete the nursing  
13 home bed replacement project, provided the building owner has secured  
14 an interest in the beds.

15 **Sec. 5.** RCW 70.38.125 and 1989 1st ex.s. c 9 s 606 are each  
16 amended to read as follows:

17 (1) A certificate of need shall be valid for two years. One six-  
18 month extension may be made if it can be substantiated that substantial  
19 and continuing progress toward commencement of the project has been  
20 made as defined by regulations to be adopted pursuant to this chapter.

21 (2) A project for which a certificate of need has been issued shall  
22 be commenced during the validity period for the certificate of need.

23 (3) The department shall monitor the approved projects to assure  
24 conformance with certificates of need that have been issued. Rules and  
25 regulations adopted shall specify when changes in the project require  
26 reevaluation of the project. The department may require applicants to  
27 submit periodic progress reports on approved projects or other  
28 information as may be necessary to effectuate its monitoring  
29 responsibilities.

30 (4) The secretary, in the case of a new health facility, shall not  
31 issue any license unless and until a prior certificate of need shall  
32 have been issued by the department for the offering or development of  
33 such new health facility.

34 ~~((5) Any person who engages in any undertaking which requires~~  
35 ~~certificate of need review without first having received from the~~  
36 ~~department either a certificate of need or an exception granted in~~  
37 ~~accordance with this chapter shall be liable to the state in an amount~~

1 ~~not to exceed one hundred dollars a day for each day of such~~  
2 ~~unauthorized offering or development. Such amounts of money shall be~~  
3 ~~recoverable in an action brought by the attorney general on behalf of~~  
4 ~~the state in the superior court of any county in which the unauthorized~~  
5 ~~undertaking occurred. Any amounts of money so recovered by the~~  
6 ~~attorney general shall be deposited in the state general fund.~~

7 ~~(6) The department may bring any action to enjoin a violation or~~  
8 ~~the threatened violation of the provisions of this chapter or any rules~~  
9 ~~and regulations adopted pursuant to this chapter, or may bring any~~  
10 ~~legal proceeding authorized by law, including but not limited to the~~  
11 ~~special proceedings authorized in Title 7 RCW, in the superior court in~~  
12 ~~the county in which such violation occurs or is about to occur, or in~~  
13 ~~the superior court of Thurston county.)~~

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.38 RCW  
15 to read as follows:

16 (1) Upon completion of a project, the department shall continue to  
17 monitor the operation of the project and the provision of the approved  
18 service for five years to assure that the project complies with the  
19 terms and conditions of the certificate, including the population  
20 served, medicare beneficiaries and medical assistance program clients  
21 served, levels of charity care provided, utilization and volume  
22 standards applicable to tertiary services, special conditions and  
23 representations associated with the approval of the project, and other  
24 items relevant to the project.

25 (2) The department shall adopt rules, with the participation of  
26 providers, to establish the responsibilities of certificate recipients  
27 to assist the department in regular monitoring of completed projects,  
28 and penalties for failure to assist.

29 (3) Other agencies having data relevant to the department's  
30 postcompletion monitoring activities shall cooperate with the  
31 department in sharing such information.

32 (4) The department shall establish a reasonable fee for  
33 postcompletion monitoring activities.

34 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.38 RCW  
35 to read as follows:

36 (1) In any case in which the department finds that there has been

1 a failure or refusal to comply with the requirements of this chapter,  
2 the standards or rules adopted pursuant to this chapter, or the terms  
3 and conditions of an approved certificate of need, the department is  
4 authorized to suspend, revoke, or modify a certificate of need for an  
5 approved project or impose other appropriate penalties, including  
6 fines, not to exceed ten thousand dollars per violation, and moratoria  
7 on future certificate of need applications for a specified period of  
8 time, not to exceed two years. The department shall establish  
9 procedures for the notification to the recipient of a certificate of  
10 need of an adverse action against a certificate of need and to provide  
11 the right to an adjudicative proceeding. Upon the issuance of an  
12 adverse action for a violation of this section, the department shall  
13 notify any agency that may have issued a license for the project that  
14 an action has been taken and the nature of the violation. If the  
15 licensing agency determines that the underlying facts constitute a  
16 violation of any licensing provisions, the licensing agency may take  
17 appropriate disciplinary action within its authority.

18 (2) Any person who engages in any undertaking which requires  
19 certificate of need review without first having received from the  
20 department either a certificate of need or an exception granted in  
21 accordance with this chapter is liable to the state in an amount not to  
22 exceed one hundred dollars a day for each day of such unauthorized  
23 offering or development. Such amounts of money are recoverable in an  
24 action brought by the attorney general on behalf of the state in the  
25 superior court of any county in which the unauthorized undertaking  
26 occurred. Any amounts of money so recovered by the attorney general  
27 shall be deposited in the state general fund.

28 (3) The department may bring any action to enjoin a violation or  
29 the threatened violation of the provisions of this chapter or any rules  
30 adopted pursuant to this chapter, or may bring any legal proceeding  
31 authorized by law, including but not limited to the special proceedings  
32 authorized in Title 7 RCW, in the superior court in the county in which  
33 such violation occurs or is about to occur, or in the superior court of  
34 Thurston county.

35 (4) The legislature finds that the practices covered by this act  
36 are matters vitally affecting the public interest for the purpose of  
37 applying the consumer protection act, chapter 19.86 RCW. A violation  
38 of this act is not reasonable in relation to the development and

1 preservation of business and is an unfair or deceptive act in trade or  
2 commerce and an unfair method of competition for the purpose of  
3 applying the consumer protection act, chapter 19.86 RCW.

4 **Sec. 8.** RCW 70.38.135 and 1989 1st ex.s. c 9 s 607 are each  
5 amended to read as follows:

6 The secretary shall have authority to:

7 (1) Provide when needed temporary or intermittent services of  
8 experts or consultants or organizations thereof, by contract, when such  
9 services are to be performed on a part time or fee-for-service basis;

10 (2) Make or cause to be made such on-site surveys of health care or  
11 medical facilities as may be necessary for the administration of the  
12 certificate of need program, including any monitoring activities  
13 conducted pursuant to this chapter;

14 (3) Upon review of recommendations, if any, from the board of  
15 health:

16 (a) Promulgate rules under which health care facilities providers  
17 doing business within the state shall submit to the department such  
18 data related to health and health care as the department finds  
19 necessary to the performance of its functions under this chapter;

20 (b) Promulgate rules pertaining to the maintenance and operation of  
21 medical facilities which receive federal assistance under the  
22 provisions of Title XVI;

23 (c) Promulgate rules in implementation of the provisions of this  
24 chapter, including the establishment of procedures for public hearings  
25 for predecisions and post-decisions on applications for certificate of  
26 need;

27 (d) Promulgate rules providing circumstances and procedures of  
28 expedited certificate of need review if there has not been a  
29 significant change in existing health facilities of the same type or in  
30 the need for such health facilities and services;

31 (4) Grant allocated state funds to qualified entities, as defined  
32 by the department, to fund not more than seventy-five percent of the  
33 costs of regional planning activities, excluding costs related to  
34 review of applications for certificates of need, provided for in this  
35 chapter or approved by the department; and

36 (5) Contract with and provide reasonable reimbursement for  
37 qualified entities to assist in determinations of certificates of need.

1        NEW SECTION.   **Sec. 9.**   The criteria in RCW 70.38.115 apply to any  
2   applications for a certificate of need submitted after the effective  
3   date of this act.

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